

Rental Plus Maintenance Contract

Standard Conditions

The following standard terms and conditions apply to every agreement entered into by the Company for the hire of Equipment and the provision of Maintenance Services.

1. **Definitions**
In these Conditions:-
 - 1.1 the following words have the following meanings:-
 - "Clause" a clause of this Contract;
 - "Conditions" the terms and conditions for the hire of Equipment and the provision of the Maintenance Services, as set out in this document, together with any special terms and conditions agreed in writing by the Customer as set out in the Schedule;
 - "Commencement Date" the date stipulated in Clause 2.2, when the Contract is deemed to have come into force;
 - "Contract" the contract for the hire of the Equipment and the provision of the Maintenance Services entered into between the Customer and the Company on the Conditions;
 - "Customer" the company who agrees to hire the Equipment and accepts performance of the Maintenance Services from the Company as specified in the Schedule;
 - "Deposit" the deposit payable on the commencement of the Contract as specified in the Schedule;
 - "Equipment" the fire extinguishers specified in the Schedule, together with any renewals or replacements of, or additions to, such extinguishers, provided by the Company;
 - "Maintenance Services" the maintenance services to be performed in respect of the Equipment (or the Customer's own fire extinguishers) as described in Clause 9.1;
 - "Maintenance Payment" the monies payable by the customer in respect of the provision of the Maintenance Services pursuant to Clause 5;
 - "Liquidated Damages" the sums agreed between the Customer and the Company as payable to the Company to compensate the Company for the wrongful termination of this Contract;
 - "RPI" the annual payments by the Customer to the Company in return for the hire of the Equipment as set out in the Schedule (and "Rental" shall be construed as referring to each or all of such payments as applicable);
 - "Retail Prices Index" the Retail Prices Index as published by the Central Statistical Office of the Exchequer (or such other appropriate Index as may from time to time be substituted for the RPI);
 - "Schedule" the Schedule set out overleaf containing details of the Customer, the Equipment, the Rental, the Initial Maintenance Payment, and any special Conditions, signed by or on behalf of the Customer and the Company;
 - "Year" the period of twelve calendar months from the Commencement Date, and each subsequent period of twelve calendar months, during the subsistence of this Contract;
 - 1.2 the singular includes plural and vice versa, and words importing any gender include all genders;
 - 1.3 headings are for ease of reference only;
2. **Contract**
 - 2.1 Statutory by the Customer of the Schedule constitutes an offer to hire the Equipment and accept provision of the Maintenance Services on these Conditions.
 - 2.2 No Contract shall have been formed until the offer constituted by Clause 2.1 has been accepted by the Company, and written confirmation of such acceptance has been sent by the Company to the Customer. In the absence of doubt, signature of the Schedule by the Company's representative does not constitute such acceptance.
 - 2.3 Only these Conditions apply to the Contract, and shall override any other terms, conditions or warranties which the Customer may seek to impose. Acceptance of the Equipment by or on behalf of the Customer shall be conclusive evidence that these Conditions are accepted by the Customer and apply to the Contract.
 - 2.4 No variation to the Contract shall apply unless agreed in writing by an authorised representative of the Company.
3. **Term**

The Contract commences on the Commencement Date, and continues until terminated in accordance with the provisions of Clause 11.
4. **Deposit**
 - 4.1 The Company shall issue an invoice for the Deposit at the same time as issuing the invoice for the first year's Rental.
 - 4.2 The Deposit may be forfeited by the Company if:-
 - 4.2.1 the Customer fails to make any payment on the due date; or
 - 4.2.2 the Customer breaches its obligations pursuant to Clause 8; or
 - 4.2.3 at the end of the Contract, the Company is unable to obtain possession of the Equipment, or the Equipment is in need of repair or replacement;
 - 4.3 If the circumstances set out in Clause 4.2 do not occur, the Deposit (or any balance outstanding) shall be returned to the Customer (interest free) within fourteen days of retrieval of the Equipment by the Company following the termination of the Contract.
5. **Rental**
 - 5.1 The Rental for the first five years of the duration of this Contract is set out in Part 3 of the Schedule. Thereafter, the Rental is the sum shown in Part 4 of the Schedule.
 - 5.2 Each Rental is payable in advance in respect of each Year. The Company will issue an invoice in respect of the first Rental within five working days of the Commencement Date and subsequent invoices in each Year for each subsequent Rental at the end of the month containing each respective anniversary of the Commencement Date.
 - 5.3 The Maintenance Payment is the payment to be made by the Customer to the Company for each provision of the Maintenance Services. The Maintenance Payment is set out in Part 5 of the Schedule. Thereafter, each Maintenance Payment will be charged at the Company's standard rates for servicing fire extinguishers prevailing at the time of the provision of those Maintenance Services. The Company will issue an invoice in respect of each Maintenance Payment upon completion of the provision of the Maintenance Services.
 - 5.4 If the Rental increases from the figure for the RPI for the month in the previous Year in which the last Rental invoice was issued, then the Company reserves the right to increase the Rental by a corresponding percentage to the amount of such percentage increase in the RPI.
 - 5.5 If the Customer already has a rental and maintenance contract in force with the Company as at the Commencement Date (the "Initial Contract"), then the Rental for Equipment specified in the Schedule shall be aggregated with the rental due under the Initial Contract, with the intention that rentals for all equipment hired out to an individual customer by the Company fall due on the anniversary of the Initial Contract, and shall be included in the invoices issued under the Initial Contract (until such time as the Initial Contract shall terminate). The Company shall charge under this Contract, the first Rental shall be apportioned pro rata to the period of time from the Commencement Date to the anniversary of any such Initial Contract.
 - 5.6 Invoices are payable in full in cleared funds within thirty days of the date of issue. Time of payment is of the essence. If the Customer fails to make any payment due to the Company on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:-
 - 5.7.1 cancel the Contract in so far as any Equipment remains to be delivered, or Maintenance Services performed under it, or suspend any further delivery of the Equipment (including, for avoidance of doubt, replacement extinguishers) or performance of the Maintenance Services; and
 - 5.7.2 charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 8% per annum compounded daily, until payment in full is made.
6. **Delivery**

The Equipment shall be delivered within fourteen days of the Commencement Date. Risk in the Equipment shall pass to the Customer on delivery of the Equipment.
7. **Title To The Equipment**

The Equipment shall at all times remain the property of the Company (notwithstanding the passing of risk pursuant to Clause 6) and nothing in the Contract shall be construed as conferring on the Customer any right or interest in the Equipment otherwise than as a hirer.
8. **The Customer's Obligations**

The Customer shall during the continuance of the Contract:-

 - 8.1 keep the Equipment within its possession or under control and not allow the Equipment to be removed from the address set out in the Schedule without the prior written consent of the Company. Loss or destruction of, or damage to, the Equipment does not relieve the Customer of the obligation to pay the Rentals in accordance with Clause 5;
 - 8.2 not mortgage, pledge, charge or encumber the Equipment;
 - 8.3 not sell, assign or otherwise dispose of the Equipment;
 - 8.4 not employ any person to enter its premises for the purpose of carrying out their duties in respect of the maintenance of the Equipment, and for the purpose of collecting the Equipment (either upon termination of the Contract or otherwise). If the Customer fails to let the Company's employees enter its premises to perform the Maintenance Services, then the Customer shall be liable to pay to the Company its minimum daily charge for a maintenance call out at the rates prevailing at the time; afford the Company's employees every reasonable facility to enable them to perform their duties pursuant to the Contract;
 - 8.5 notify the Company forthwith in writing if any distress or execution is threatened or levied against any of the Customer's property or if a petition for winding up the Contract or for the appointment of an administrator (or if the Customer is an individual a bankruptcy petition) is presented or a receiver or administrative receiver is appointed over all or some of its assets;
 - 8.6 not move alter deface or obscure any name, nameplate identification number or trademark on the Equipment;
 - 8.7 accept responsibility for the safe keeping of the Equipment to make good any loss or damage caused to the Equipment. All repair, recharging and servicing work on the Equipment shall be carried out by the Company and its employees pursuant to the terms of this Contract;
 - 8.8 only to use the Equipment in connection with the relevant risk set out on the Company's written instructions thereon;
 - 8.9 not, without the prior written consent of the Company, make any modifications to the Equipment or install any accessory attachment or other device to the Equipment. All replacement parts, supplies, accessories, attachments or devices affixed to the Equipment are (unless the Company otherwise agrees in writing) the property of the Company;
 - 8.10 forthwith notify the Company of the loss or destruction of or any damage to the Equipment; keep installed equipment under normal conditions (i.e. protected against frost, detrimental weather and wind) and free from corrosive conditions (e.g. subject to acid alkaline atmospheres);
 - 8.11 punctuate the equipment with the Company's name and contact details at all times, the cost of such pressure charges and component parts used or accidentally discharged or damaged except in the case where the discharge is needed at recognised intervals to satisfy official recommendations, where the cost of such discharge is payable by the Company;
 - 8.12 not by any act or omission contravene the provisions any status, statutory instrument or regulation relating to the Equipment or its use;
 - 8.13 repay to the Company on demand all costs, charges and expenses (on a full indemnity basis) incurred in any way by reason of a breach of this Contract by the Customer (including, without limitation, any costs, charges and expenses incurred in ascertaining whereabouts of the Equipment and/or the Customer);
 - 8.14 pay the Rentals and the Maintenance Payments in full without deduction or set-off when due;
 - 8.15
 - 8.16
- 8.17 observe the terms of the Contract in all respects.
9. **The Company's Obligations**
 - 9.1 The Company agrees and undertakes once during each year:-
 - 9.1.1 to provide a maintenance service of the Equipment at the address stated in the Schedule;
 - 9.1.2 to issue a certificate after the service to the effect that the Equipment, after service and any action found necessary at the time of the service, was left in proper working condition;
 - 9.1.3 if the Customer, at the discretion of the Company, gives reasonable instruction at the time of the service in the use of the Equipment to such members of the Customer's staff who have joined since the initial installation of the Equipment, providing a prior request is made to the Company for such instruction, and the staff are available for instruction at the time of service.
 - 9.2 The Company will replace any of the Equipment (or the Company) to give reasonable instruction at the time of the service. The cost of such replacement parts will be charged to the Customer at the Company's price list in force at the time (unless the discharge occurred to satisfy official recommendations as set out in Clause 8.13).
 - 9.3 The Company warrants the Customer that:-
 - 9.3.1 the Equipment will be of satisfactory quality;
 - 9.3.2 the Maintenance Services will be provided with reasonable skill and care;
 - 9.3.3 if the Equipment (upon examination by the Company) is found to be defective due solely to faulty materials, workmanship or design, the Company shall (at its option) repair or replace the defective Equipment, provided that no claims due to the Company under the Contract have been paid in accordance with the terms of the Contract.
 - 9.4 If the Maintenance Services prove to have been performed unsatisfactorily, or in a substantial manner, the Company shall re-perform free of charge any such defective or substantial Maintenance Services provided that the claim is notified (with all relevant details) in writing to the Company within thirty days of the date of discovering the alleged substandard or unsatisfactory performance.
10. **The Company's Liability**
 - 10.1 The Customer agrees with the Company that if the Customer shall suffer loss or damage as a result of any breach of the terms of this Contract by the Company or as a result of the negligence of the Company, then the liability of the Company in respect of such loss or damage shall be limited to the smallest of the following:-
 - 10.1.1 the actual amount of any loss or damage suffered by the Customer;
 - 10.1.2 the sum of £5,000,000;
 - 10.1.3 the sum of £5,000,000.This limitation shall continue to subsist indefinitely and notwithstanding termination of the Contract.
 - 10.2 The Company promises to exercise reasonable skill and care in the manufacture, assembly or delivery of the Equipment and the performance of the Maintenance Services (as applicable), but if any breach of this promise by the Company causes death or personal injury, then the Company shall accept liability. The Company's liability under Clause 10.1 shall be to the exclusion of all other liability to the Customer, whether contractual, tortious or otherwise, and all conditions or warranties whatsoever concerning the Equipment (whether express or implied) are excluded to the fullest extent permitted by law. Without prejudice to the generality of the foregoing, no liability shall be accepted by the Company for any loss of profit, business, contracts, revenues or anticipated savings, or for any special, indirect or consequential damage of any nature whatsoever.
 - 10.3 The Customer agrees with and accepts that with regard to the limitations of liability set out in Clauses 10.1 to 10.3 (inclusive), that such limitations are intended to be fair and reasonable having regard (amongst other things) to the Maintenance following circumstances:-
 - 10.4.1 that the potential losses which could or might be caused as a result of the breach or negligence as referred to in Clauses 10.1 to 10.3 (inclusive) are greatly in excess and wholly disproportionate to the amount which is being charged by the Company in respect of the Equipment or the Services;
 - 10.4.2 that the Company has no information or knowledge as to the value of any contracts to be entered by the Customer which may involve the Equipment in any way;
 - 10.4.3 that the Company has no ability or duty to keep to the level of loss as potentially possible for the benefit of the Customer, and all the Company's other customers, its charges in respect of the Equipment and Services provided by it;
 - 10.4.4 that the Company is unable to obtain adequate insurance cover in respect of the potential losses which could or might arise from any breach or negligence as referred to in Clause 10.
 - 10.4 The limitation of liability contained in Clauses 10.1 to 10.3 shall extend not only to the Company but to its servants, and duly authorised sub-contractors or agents.
11. **Termination**
 - 11.1 The Company shall be entitled to terminate the Contract for the rental of the Equipment and the performance of the Maintenance Services, and/or suspend all further performances of the Maintenance Services or delivery of the Equipment without liability on the part of the Company, if the Customer:-
 - 11.1.1 shall commit any material breach of the Contract;
 - 11.1.2 fails to pay any Rental or Maintenance Payment on the due date for payment;
 - 11.1.3 makes any voluntary arrangements with creditors or becomes subject to an administration order or being an individual or a firm) becomes bankrupt or (being a company) goes into liquidation; or
 - 11.1.4 permits an encumbrancer to take possession, or a receiver to be appointed over any of the property or assets, of the Customer;
 - 11.1.5 ceases to carry on his business; or
 - 11.1.6 fails to pay its debts as and when due pursuant to section 123 of the Insolvency Act 1986.
 - 11.2 Clause 11.1 shall apply if the Company reasonably apprehends that any of the events mentioned in that Clause is likely to occur in relation to the Customer, and notifies the Customer accordingly.
 - 11.3 The Customer shall be deemed to have accepted by his conduct, if less than three months notice in writing of its desire so to do, with such notice to expire on the fifth anniversary of the Commencement Date (and time of giving notice shall be of the essence).
 - 11.4 If no notice is given pursuant to Clause 11.3, then the Contract shall continue until, and automatically terminate on, the fifth anniversary of the Commencement Date without the need for the service of notice, any communication or consent from the Customer to the termination or purported termination of the Contract must be in writing (even if to confirm verbal communications with the Company).
12. **Consequences Of Termination**

Upon termination of the Contract for any reason, the Customer shall:-

 - 12.1 at its own expense to deliver or procure the delivery of the Equipment to the Company in good repair and condition (fair wear and tear excepted) provided that the Company at its sole discretion may itself take steps to repossess the Equipment and for such purpose the Customer grants an irrevocable licence to the Company and its employees to enter any premises owned or controlled by the Customer;
 - 12.2 pay to the Company a sum equal to the aggregate of:
 - 12.2.1 all areas of sums due by way of Rentals under this Contract; and
 - 12.2.2 if such termination shall occur prior to the fifth anniversary of the Commencement Date, the sum of Liquidated Damages, a sum equal to the amount of the unpaid balance of the five annual Rentals, discounted by 25 per cent; and
 - 12.2.3 if such termination shall occur after the fifth anniversary of the Commencement Date, then the sum of Liquidated Damages, a sum equal to the remainder of the unpaid Rentals due to the end of the Contract pursuant to Clause 11.4, discounted by 25 per cent; and
 - 12.2.4 if such termination shall occur prior to or on the fifth anniversary of the Commencement Date pursuant to Clause 11.3, and if less than five Maintenance Payments have been received by the Company, by way of Rentals, a sum equal to the amount of the last Maintenance Payment (payable in respect of the Equipment only) issued by the Company prior to such termination, multiplied by the number of Maintenance Services not actually performed, discounted by 25 per cent; and
 - 12.2.5 if such termination shall occur after the fifth anniversary of the Commencement Date, and if less than ten Maintenance Payments have been received (in total) by the Company, by way of Rentals, a sum equal to the amount of the last Maintenance Payment (payable in respect of the Equipment only) issued by the Company prior to such termination multiplied by the number of Maintenance Services not actually performed, discounted by 25 per cent; and
 - 12.2.6 the cost of all repairs required to repair and put the Equipment in good order and condition or if such repairs are not completed within the three month period from the date of termination such cost shall be such amount as is estimated by an assessor appointed by the Company; and
 - 12.2.7 the costs incurred by the Company in taking possession under Clause 12.1 and the Company shall have the right to use the whole or part of the Deposit in satisfaction of the sums due under this Contract;
 - 12.3 The sums due pursuant to Clause 12.2 apply in the event of any purported termination of the Contract by the Customer which is not in accordance with Clause 11.3.
 - 12.4 The sums due pursuant to Clause 12.2 are separate and severable, and if it is found that any sum stipulated in that clause is invalid, unenforceable or unlawful, then its invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of Clause 12.2, which shall continue in full force and effect notwithstanding such invalidity, unenforceability or illegality.
 - 12.5 The Customer acknowledges that the sums due by way of Liquidated Damages represent a genuine pre-estimate of the likely loss due to the Company by way of rental and service income, and do not represent a penalty.
13. **Assignment**

The Customer shall not without the prior written consent of the Company assign the Contract or any part of it.
14. **Force Majeure**

The Company shall not be liable for any delay in performing or failure to perform its obligations under the Contract if such delay or failure results from any act of God, war, strike, lock-out, industrial action, fire, suppliers or sub-contractors, flood, drought, pestilence or other event beyond the Company's reasonable control. Such delay or failure shall not constitute a breach of the Contract and the Company shall be entitled to a reasonable extension of time for performing its obligations under the Contract in the event of an occurrence as referred to in this Clause.
15. **Notices**

Any notices required or permitted to be given by either party to the other shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified to the party giving the notice.
16. **General**
 - 16.1 The Contract shall be governed by the laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the English Courts in the interpretation of this Contract or the resolution of any dispute arising therefrom.
 - 16.2 The failure to exercise, or the delay in exercising, any right or remedy provided by this Contract or by law, does not constitute a waiver of the right or remedy, or a waiver of other rights or remedies.
 - 16.3 A waiver of a breach of any of the Conditions of this Contract or of a default under this Contract, does not constitute a waiver of any other breach or default, and shall not affect the other terms of this Contract.
 - 16.4 A waiver or breach of any of the terms of this Contract, or of a default under this Contract, will not prevent a party from subsequently requiring compliance with the waived obligation.
 - 16.5 The rights and remedies provided by this Contract are cumulative and (subject as otherwise provided in this Contract) are not exclusive of any right or remedy provided by law.
 - 16.6 Should there be more than one Customer under this Contract, then their liability shall be joint and several.
 - 16.7 If any of the provisions of this Contract is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions in question shall not be affected thereby.

TUNBRIDGE WELLS FIRE PROTECTION LIMITED

HIRE AGREEMENT TERMS AND CONDITIONS

1. In consideration of the payment by you to us of the initial fee and the subsequent annual fee specified in the Schedule overleaf as varied from time to time in accordance with Condition 3 together with the appropriate amount of VAT thereon WE UNDERTAKE as follows:
 - (a) (i) to deliver the extinguishers referred to in the Schedule overleaf to the location address.
 - (ii) to ensure that the extinguishers are correctly charged and filled.
 - (iii) subject to those persons being available at the time of delivery to instruct you or any persons nominated by you in the use of the extinguishers.
 - (b) thereafter to inspect the extinguishers once each year during the continuance of this Agreement and to replace where necessary and without further payment any charges that require replacement due to deterioration and at the time of any such inspection to give such further instruction as may be required to any persons nominated by you in the use of the extinguishers.
- NB The mounting of the fire extinguisher(s) on walls is the responsibility of the Hirer.
2. All payments due under this Agreement shall be made to Tunbridge Wells Fire Protection Limited, at their registered office.
 3. The subsequent annual fee specified in the Schedule shall be increased in accordance with the increase in the Retail Price Index.
 4. You as Hirer agree as follows:
 - (i) to pay the initial fee and the subsequent annual fee (as varied in accordance with Condition 3 above) together with VAT thereon within 14 days of receipt of the relevant Invoices received from us requesting payment.
 - (ii) to notify us in writing of any change in your postal address.
 - (iii) not to remove or allow the fire extinguishers to be moved from the location address without our previous consent in writing.
 - (iv) to allow our representative access to the installation address at a reasonable time for the purpose of inspecting and repairing, maintaining and servicing the extinguishers.
 - (v) to keep the extinguishers in good condition and to make good any damage or reimburse us for any damage or loss to the extinguishers (fair wear and tear excepted).
 - (vi) to observe any directions given either by us or by the manufacturers of the extinguishers regarding the use of the extinguishers.
 - (vii) not to sell underlet or dispose of the extinguishers nor allow any other person except an authorised member of this company to service or inspect the equipment.
 - (viii) not to suffer the levy against you of any distress or execution, nor present or suffer to be presented a Bankruptcy Order against you, not to enter into or attempt to enter into a composition with your creditors, nor call or suffer to be called a meeting (whether formal or informal) of your creditors or any of them.
 - (ix) that you are taking the fire extinguishers on hire for the purposes of a business carried on by you.
 5. This Agreement shall continue for a minimum period of ten years from the commencement date specified overleaf and thereafter shall continue until determined by either party giving to the other party one month's notice in writing.
 6. The initial fee and subsequent annual fee is calculated on the basis that this Agreement will continue for ten years. In the event of early termination of this Agreement before the expiration of the ten year period, you will be liable to pay to us the amount of all hire payments that would have been made from the date of termination to the expiration of the ten year period less an allowance of 25% in respect of the costs of maintenance not carried out and the value of the recovered extinguishers.
 7. Should you fail to make payment of any sum due to us or commit any other breach of the Agreement, we may after due notice terminate this Agreement and you will no longer be in possession of the extinguishers with our consent.
 8. Upon termination of this Agreement you will surrender up the extinguishers to us in good condition (fair wear and tear excepted) and pay us all amounts due but unpaid to the date of termination.
 9. When you are more than one, each of you is separately responsible for performance of this Agreement.
 10. We accept no responsibility for consequential loss or damage howsoever arising from the letting evidenced by this Agreement unless it arises from our negligent act or default.